IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 302 OF 2004

IN

SUMMARY SUIT NO. 506 OF 2004

M/s.Plastika Enterprises .. Plaintiffs

versus

M/s.GMS Technologies .. Defendants

...

Mr.S.P. Kanuga for the plaintiff.

Mr.G.C. Poojari for the defendants.

CORAM : D.G. KARNIK,J.

DATED : 7th March 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. The plaintiff has filed this suit for recovery of the price of the goods sold and delivered to the

defendant and interest thereon. At the hearing of the summons for judgement, the learned counsel for the plaintiff
gives up the claim for interest.

3. The defendant contends that it is not liable to pay interest. Since the plaintiff has given up the claim for interest, this defence does not survive.

4. The second defendant of the defendant is that the goods were not supplied in time and therefore, plaintiff is liable to pay penalty. The delay appears to be only of few days. The order does not show any penalty clause. The defendant accepted the goods without demur and did not refuse to accept delivery on the ground that delivery was late. Furthermore, he did not make any demand of any penalty immediately after receipt of the goods. In the circumstances, the defence of the defendant that it is entitled to recover a penalty from the plaintiff is an afterthought and is not a defence of any substance.

5. In the circumstances, the defendant can only

be granted conditional leave to defend the suit. The defendant is accordingly granted conditional leave to defend the suit subject to its depositing in the Court the principal sum of Rs.2,54,013.76 within a period of four weeks. On such deposit being made, the plaintiff shall be entitled to withdraw the said sum by furnishing security to the satisfaction of Prothonotary & Sr. Master. On deposit of the money, suit shall stand transferred to the list of commercial causes.

6. The defendant shall file written statement within a period of four weeks.

D.G. KARNIK, J